

SESSION 4

Improving the Contribution of Contracts to the Effective Implementation of Integrated Safety Management

Session Members

Keith Klein, RL, Chair
Hermann Grunder, ANL-E
Richard Hopf, ME-60
Joe Nemec, Bechtel Jacobs, OR
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The following topics were researched and discussed by the breakout session committee:

- * Key contract clauses and flexibilities (Lead – Mark Whitaker)
- * A contractor's perspective on achieving efficiencies and stronger safety management (Lead – Joe Nemec)
- * Optimum oversight of Management and Operating contractors (Lead – Hermann Grunder)

The committee reviewed the three key contract clauses – ISM Clause: “Integration of environment, safety, and health into work planning and execution,” DEAR 970.5223-1; Laws Clause: “Laws, regulations, and DOE directives,” DEAR 970.5204-2; and Fee Clause: “Conditional payment of fee, profit, or incentives” (Killer Clause), DEAR 970.5215-3. The main features of each that affect flexibility in implementing ISM were discussed. It was noted that there is a great deal of flexibility in contractual clauses for both DOE and contractors to set safety requirements and standards, but motivation of the field offices and contractors to take advantage of the flexibilities is an issue. From a contractor's perspective, it was stated that the overarching motivation of a contractor for achieving efficiencies and stronger safety management is maximizing return on investment. The committee recognized that contract reform

Facilitators

Mark Whitaker, S-3.1
Frank Tooper, EH-3

Action Items

- * Implement a system for sharing best practices and lessons learned on contracting, tailoring requirements, and obtaining exemptions (Lead Facilitator – F. Tooper)
- * Prepare a white paper to share experiences and lessons learned from Kansas City (Lead - B. Sellers)
- * Clarify existing flexibilities for tailoring List B (Lead – R. Hopf)
- * Request EFCOG consider sharing best practices for enhancing subcontractors' safety (workshops, websites, newsletters, etc.) (Lead – J. Nemec)
- * Revisit standard “Killer Clause” and “ISM Clause” to ensure intent and construct meet safety improvement objectives; involve EFCOG (Lead – R. Hopf)
- * Identify pilots for commercial standards and for reduced DOE oversight (see Session 2) based on contractor safety performance (Lead – K. Klein)
- * Build and sustain DOE core competency for managing contracts (Lead – TBD)
- * Provide a progress report at the Spring 2002 ISMS Workshop and a path forward for full implementation (Lead – K. Klein)

has had support from three Department Secretaries, has had much success/improvement from a performance-based contract standpoint, and should be continued in the environment, safety, and health area.

Contract safety requirements and associated performance-based fee structures, oversight mechanisms and personnel, processes for improving safety, and other contract performance features were summarized and compared from a number of Department of Defense, DOE, and commercial programs. The data provided indicated an inordinate number of personnel performing safety and oversight roles on DOE programs without marked enhancements in performance.

The committee proposed that if DOE selects contractors with outstanding safety and profit records, they should have confidence to focus on outcomes rather than process, recognizing that the cost of efficiency may be increased risk. The committee also noted that contractors may be reluctant to take innovative approaches to work performance due to the “Killer Clause.” Performance-based contracts need to be executed with clear, consistent, and measurable performance metrics tailored to specific outcomes, and consistent metrics should be applied for similar contract types and programs. The committee noted that oversight of the process for achieving outcomes should be minimized, monitoring the ES&H results against commitments should be DOE’s focus, and certification of organizations and systems (e.g., ISO, OSHA Voluntary Protection Program) should be a goal.

Principle Findings and Recommendations

The principle findings and recommendations of the committee are summarized below.

1. Lessons Learned

Much of safety is behavioral, reflected in management and worker attitudes, values, and competencies. Contracts influence behaviors by prescribing work scope, setting tones (e.g., sense of urgency or conservatism, resource constraints, incentives, prioritizations, risk taking), and establishing requirements or other conditions not set by law or regulation. It is within the power of senior management of DOE and its contractors to make mutually agreeable changes to their contracts as needed and with due consideration to the unique situations at each of the DOE sites. It was agreed that there is no “one size fits all” answer. Concern was raised regarding the confusion that could occur if dramatic across-the-board changes were pursued without due consideration to the unique situations at each of the DOE sites.

The committee re-affirmed that if parties were sufficiently motivated, there are ample examples throughout the DOE complex of how to change contract provisions (e.g., tailoring List B requirements), how to better interpret or apply requirements (e.g., the ISM clause or Part 830 requirements), how to better manage subcontracts, or how to take advantage of years of contract reform. Although there already exists considerable flexibility in applying or interpreting DOE requirements, there remains

confusion and/or reluctance in the Department on how to apply lessons learned from these successes. DOE needs to mature its processes for capitalizing on the lessons learned to support continuous improvement and contract reform.

2. Focus on Feedback and Continuous Improvement (ISMS Core Function)

The committee concluded that the best area involving contracts on which to focus at this time to raise ISM to the next level is continuous improvement – taking advantage of lessons learned and feedback. The committee recommended that the contractor/laboratory community share information, subcontracting lessons learned, and successes in tailoring requirements using the Energy Facilities Contractor Operating Group (EFCOG) in a similar capacity as the nuclear industry uses the Institute for Nuclear Power Operations (INPO).

It was recommended that the Office of Environment, Safety and Health (EH) facilitate the development of databases or systems to assist in information sharing, particularly in regards to benchmarking and lessons learned, and in clarifying processes for revising List B and obtaining exemptions and interpretations. Use of pilot programs was recommended; Richland Operations Office indicated, for example, that PNNL's new contract may be based on industry standards with limited use of DOE orders and oversight.

3. Communications

The Committee agreed that the meeting participants needed to communicate to their respective DOE and contractor line and staff organizations involved in establishing or administering their contracts, or the management of safety requirements therein, that the current DOE Administration wants to take ISMS to the next level and is eager to entertain new, or previously rejected, initiatives in the context of continuous improvement.

4. Conditional Payment of Fee, Profit, or Incentives Clause

One standard clause that was singled out for improvement was the conditional payment of fee, profit, or incentives clause (i.e., the "Killer Clause"). The committee concluded that, in some circumstances, this clause can impede getting on with risk-reducing work or discourage contractors with excellent safety records from being interested in working for DOE.

At Issue

Comments by conference participants identified the following subjects at issue and/or re-affirmed committee findings. First, DOE needs to be vigilant when managing innovative contracts and not let requirements creep back into the contracts and programs over time. DOE needs to be cautious not to create too many pilots that are out of the mainstream and not generating valuable lessons learned, as they can also lead to bureaucracy. The role and value of partnering agreements versus standard contracts was a point of discussion, particularly in light of the need to hold contractors accountable for

their commitments. Under Secretary Card stated that DOE and contractors need to clearly describe the product or outcome they are trying to achieve and identify what is holding up achieving performance; DOE should be able to make changes and tailor requirements and bureaucracy in order to achieve the results if there is a compelling reason.